



## IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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# THE RULES DIGEST

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October 2013

**Scheduled for Committee review**  
**Monday, October 7 & Tuesday, October 8 2013**  
**Room #116**

Reference  
XXXVI IAB No. 05(09/04/13)  
XXXVI IAB No. 06(09/18/13)  
XXXVI IAB No. 07(10/02/13)

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**HIGHLIGHTS IN THIS ISSUE:**

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## ENGINEERING AND LAND SURVEYING BOARD

Monday-10:10

*Serving on boards or commissions, conflict of interest, 10/02/13 IAB, ARC 1084C, ADOPTED.*

This filing is connected to a 2012 ethical issue relating to professional engineers who are members of a governmental body such as a board or commission. The rulemaking was intended to avoid a circumstance in which a licensee may be called upon to review on behalf of a governmental body the engineering or land surveying services performed by the licensee's own organization. The problem presented by this restriction was that it discouraged licensees from serving in local government, since that service might then preclude the licensee from also doing business with the government. This rulemaking resolves any such issue. It provides that the conflict of interest may be resolved by the disqualification or recusal of the licensee when engineering or land surveying services of the licensee's organization are under review. In that circumstance, the solicitation or acceptance of a private engineering or land surveying contract by the licensee's organization would not be in violation of the rule.

## ECONOMIC DEVELOPMENT AUTHORITY

Monday-11:00

*Employee Stock Ownership Plan (ESOP), 9/18/13 IAB, ARC 1021C, NOTICE.*

2013 Iowa Acts, House File 648 appropriates \$500,000 to financial assistance for businesses wishing to create employee stock ownership plans (ESOPs). Financial assistance includes 50 percent of the cost incurred for obtaining a feasibility study conducted by an independent financial professional. The total amount of financial assistance provided to a business will not exceed \$25,000. Applicants must meet a variety of criteria:

- The applicant must be a corporation.
- The applicant shall have a valuation that is “sufficient” (more than \$5 million?) to make an ESOP feasible. (determined case-by-case)
- The applicant shall have a sufficient number of employees (more than 25?) and a total payroll that are to make an ESOP feasible. (determined case-by-case)
- The applicant shall have a cash flow level sufficient (more than \$500 thousand?) to make an ESOP feasible. (determined case-by-case)
- The applicant is not a retail business.
- The applicant is not a publicly traded company.
- The applicant has not completed a feasibility study for purposes of exploring an ESOP formation.
- The applicant has not engaged a feasibility service provider prior to July 1, 2013.

Authority staff and members with expertise in the formation of an ESOP will form an advisory panel to evaluate the applications and give them an average numerical score between 0 and 100. Each application, including its numerical score, will be referred to the director with a recommended funding decision.

### **EDUCATIONAL EXAMINERS BOARD**

Monday-11:10

*Prohibited conduct between licensees and former students, 09/04/13 IAB, ARC 0992C, NOTICE.*

The proposed amendment would prohibit romantic or sexual relationships between licensees and former students for 90 days following the student’s last date of enrollment, if the licensee and the student previously had a direct and supervisory relationship. The proposed amendment adds an additional ethics violation specifically for students no longer enrolled in a school district. In response to feedback on a prior proposal on this subject, the board has reduced the number of days in the proposed amendment from 180 to 90, provided a statutory cross reference defining “sexual conduct,” and narrowed the prohibited conduct.

### **EDUCATIONAL EXAMINERS BOARD**

Monday-11:10

*Engineering and STEM endorsements, 09/04/13 IAB, ARC 0993C, NOTICE.*

The proposed amendments implement licensure rules to support implementation of Iowa's Science, Technology, Engineering, and Mathematics (STEM) initiative. The amendments were recommended by of the Governor's STEM Advisory Council established by Executive Order 74. The proposed amendments, which will create K-8 and 5-8 STEM endorsements, a K-12 STEM specialist, a career and technical license for engineering, and a 5-12 engineering endorsement.

## **ENVIRONMENTAL PROTECTION COMMISSION**

Monday-11:30

*Stationary engines*, 09/18/13 IAB, ARC 1014C, ADOPTED.

The so-called "Rice" rule was initially promulgated in 2010, with a February 2011 effective date. In part the rule regulated emissions from small fuel-fired electric generators, used as emergency back up by some 314 municipalities. These small utilities contended these rules would impose a huge cost for retro-fitting existing engines, which were actually rarely put in use. Ultimately the Governor rescinded that portion of the filing, stating that: the Reciprocating Internal Combustion Engine ("RICE") standard "imposes unnecessary and crippling costs on small Iowa municipal utilities."

Revised regulations from the federal EPA have apparently now resolved these issues. During the Notice period the revisions received positive comments. The EPC explains the rule in these words:

Facilities that cannot meet EPA's revised requirements for emergency engines must comply with the requirements for non-emergency engines. However, until May 3, 2014, "area source" facilities that operate their engines as part of a load management program may still operate their engines for up to 50 hours in a calendar year to provide electricity to the grid or as part of a financial arrangement with another entity (also known as "peak shaving"). EPA defines an "area source" as one that emits less than 10 tons per year of any one air toxic and less than 25 tons per year of any combination of air toxics. Essentially, these facilities have an extra year after the RICE NESHAP compliance date to determine how to use these engines.

## **REVENUE DEPARTMENT**

Monday-1:10

*Commercial and industrial property tax replacement claims*, 9/18/13 IAB, ARC 1028C, NOTICE.

2013 Iowa Acts, Senate File 295, §20 provides an ongoing appropriation to the Department for the payment of commercial and industrial property tax replacement claims. Under this Act for a fiscal year beginning July 1, 2017, the total amount of moneys appropriated from the general fund to the department for the payment of these

replacement claims in that fiscal year shall not exceed the total amount of money necessary to pay all claims for the fiscal year beginning July 1, 2016. If the amount appropriated for a fiscal year is insufficient to pay all replacement claims, the department shall prorate the payment of replacement claims to the county treasurers and shall notify the county auditors of the pro rata percentage on or before September 30.

The amount of the claim is determined by taking the difference between the assessed valuation of all commercial property and industrial property for the assessment year used to calculate taxes which are due and payable in the applicable fiscal year, and the actual value of all commercial property and industrial property that is subject to assessment and taxation for the same assessment year, and multiplying that sum by the tax levy rate per \$1,000 of assessed value of each taxing district for that fiscal year. That sum is then divided by 1000.

The replacement claims shall be paid to each county treasurer in equal installments in September and March of each year.

## **INSPECTIONS AND APPEALS DEPARTMENT**

Monday-1:30

*Food licensing, 9/18/13 IAB, ARC 1025C, 1026C, NOTICE.*

The Department proposes updates to two licensing and regulatory programs relating to the licensing of food establishments: food establishment and plant inspections and food and consumer safety. ARC 1026C sets out general regulatory requirements, with much of the necessary detail already set out in Statute. Fees are set out in these rules; the fee structure is based on gross sales, and is specifically detailed in the statute, §§137F.6, 137D.2.

Inspections are determined upon risk assessment. Food establishments have routine inspections at least once every 24 months and no more than once every 3 months. Food processing plants are inspected at least once every 24 months and no more than once every 6 months. Hotels are inspected biennially. Home food establishments and vending machines are inspected at least once every 24 months.

The actual food services rules appear in ARC 1025C, containing detailed requirements. As authorized in Code Chapter 137F, the Department adopts by reference federal standards; this proposal adopts the 2009 Food Code with Supplement

requirement that establishments have a certified food protection manager. This U.S. Food and Drug Administration provision would require that at least one employee take a food safety educational course and pass an examination.

## **INSPECTIONS AND APPEALS DEPARTMENT**

Monday-1:30

Care facilities-independent reviewer. 10/02/13 IAB, ARC 1047C and 1055C, ADOPTED.

Iowa Code §135C.42 provides a process for an informal conference on a contested citation issued to a care facility or assisted living program. 2013 Acts, Senate File 394 revises this process to require that an independent reviewer hold the informal conference rather than a representative of DIA. The reviewer must be an Iowa-licensed attorney that has not employed by DIA or appeared in front of DIA on behalf of a health care facility in the past eight years in the last eight years. At the completion of the informal conference, the independent reviewer may affirm, modify, or dismiss the regulatory insufficiency.

Code §135C.42(1), as amended by the Act, in part provides:

At the conclusion of the conference the representative independent reviewer may affirm or may modify or dismiss the citation.\* \* \*If the **facility** [emphasis added] does not desire to further contest an affirmed or modified citation, it shall within five working days after the informal conference, or after receipt of the written explanation of the independent reviewer, as the case may be, comply with section 135C.41, subsection 1.

This language implies, but does not actually state, that the Department itself cannot appeal an adverse decision by the independent reviewer.

These provisions were initially reviewed at the Committees' September meeting. At that meeting a stakeholder opposed both the rules and the legislation, contending that the required qualifications for the independent reviewer would make it difficult to find a skilled reviewer. The stakeholder also contended that the Department was precluded from appealing an adverse decision. Proponents contended that the legislation corrected a procedural problem where the administrative law judge was employed by the same agency that inspected the facility and pursued the complaint.

## **MEDICINE BOARD**

Monday-2:00

Standards of practice—physicians who prescribe or administer abortion-inducing drugs, 10/02/13 IAB, ARC 1034C, ADOPTED.

Iowa Code §147.76 states that all professional licensing boards have the authority to “adopt all necessary and proper rules to administer and interpret” the licensing statutes. This filing establishes the standards of practice for physicians who prescribe or administer abortion-inducing drugs. The amendment provides that a physician shall not induce an abortion by providing an abortion-inducing drug unless the physician has first performed a physical examination of the woman to determine, and document in the woman’s medical record, the gestational age and intrauterine location of the pregnancy. The amendment requires a physician to be physically present with a woman when providing an abortion-inducing drug to the woman. The amendment requires a physician who provides an abortion-inducing drug to a woman to schedule a follow-up appointment with the woman at the same facility where the abortion-inducing drug was provided. The amendment will have the effect of prohibiting abortion via telemedicine.

The Board held a public hearing on this rulemaking in August, with very active participation by both proponents and opponents of the rule.

## **DEPARTMENT OF TRANSPORTATION**

Tuesday-9:30

*Automated traffic enforcement systems, 10/02/13 IAB, ARC 1037C, NOTICE.*

This proposal establishes the requirements, application procedures, and responsibilities in the use of automated traffic enforcement systems for fixed and mobile automated enforcement on the primary road system. These provisions apply only to local jurisdictions, which must obtain approval from the department prior to using an automated traffic enforcement system on the primary road system. These systems will only be considered in areas with a documented high-crash or high-risk location in an area or intersection with a significant history of crashes attributed to red-light running or speeding, or a school zone.

The Department does not own, operate, or receive compensation for any automated traffic enforcement system. All automated enforcement systems located in a vehicle must be owned and operated by a law enforcement agency.

These standards include provisions relating to motorist safety, signage, and effectiveness. The rules place restrictions on the use of these systems, note that paragraphs “b” and “c” use the word “should”, this word is advisory, not mandatory:

- a. Automated enforcement shall only be considered after other engineering and enforcement solutions have been explored and implemented.

*b.* An automated traffic enforcement system should not be used as a long-term solution for speeding or red-light running.

*c.* Automated enforcement should only be considered in extremely limited situations on interstate roads because they are the safest class of any roadway in the state and they typically carry a significant amount of non-familiar motorists.

*d.* Automated enforcement shall only be considered in areas with a documented high-crash or high-risk location in any of the following:

(1) An area or intersection with a significant history of crashes, which can be attributed to red-light running or speeding.

(2) A school zone.

The application process requires a six-part justification for the use of these systems. Once in place the systems must be evaluated annually to determine the effectiveness of that system on public safety and driver compliance with traffic laws. Continued use will be contingent on the effectiveness of the system, appropriate administration of it by the local jurisdiction, the continued compliance with these rules, changes in traffic patterns, infrastructure improvements, and implementation of other identified safety countermeasures. The Department may require removal or modification of a system in a particular location, as appropriate.

## **INSURANCE DIVISION**

Tuesday-10:10

*Cemetery regulation, 9/04/13 IAB, ARC 1004C, 1004C, NOTICE.*

The Division regulates the perpetual care funds used to maintain cemeteries; this rule making re-writes the existing rules. The fee for an on-site examination of a perpetual care cemetery performed by the division is \$150, and cannot be assessed more than once every five years. The division may also assess actual costs of staff time, travel, meals and lodging expenses in special circumstances, or for investigative examinations for cause, as often as necessary.

A perpetual care fund is intended to remain available perpetually as a funding source for care of the cemetery. The rules set the principle that a care fund shall not be reduced voluntarily and shall remain inviolable, except for the distribution of income.

The rules do encourage investments in appreciating assets that produce higher income levels created by growth in trust principal. The rules allow the use of the total return distribution method, which defines return on investment as including interest, capital gains, dividends and distributions realized over a given period of time.

## **PHARMACY BOARD**

Tuesday-10:45

*Vaccine administration by pharmacist*, 9/18/13 IAB, ARC 1030C, EMERGENCY AFTER NOTICE.

The board adopts an update of existing regulations relating to vaccinations administered by pharmacists. The previous rule allowed for the administration of only influenza and pneumococcal vaccines.

These revisions establish training and continuing education requirements for pharmacists who administer vaccines, identifies the vaccines that a qualified pharmacist may administer, and require compliance with the United States Centers for Disease Control and Prevention's (CDC) protocol for the administration of these vaccines.

An authorized pharmacist may administer any vaccine pursuant to a prescription or medication order for an individual patient. The pharmacist may administer, through a protocol, influenza vaccines and other emergency vaccines in response to a public health emergency. The pharmacist may administer, through a protocol, a vaccine on the ACIP-approved adult vaccination schedule, or a vaccine recommended by the CDC for international travel.

Prior to the administration of a vaccine, the pharmacist must consult with the statewide immunization registration or health information network; this requirement does not apply to influenza vaccines administered under a protocol. The pharmacist must report the administration of a vaccine described in this paragraph to the registry or health information network, and to the patient's primary health care provider.

## **HUMAN SERVICES DEPARTMENT**

Tuesday-1:00

*IowaCare—suspension of enrollment beginning July 1, 2013*, 10/02/13 IAB, ARC 1059C, ADOPTED.

These amendments codify policies regarding a suspension of enrollment in IowaCare implemented on July 1, 2013, based on funding for state fiscal year 2013-2014 and pursuant to the amended terms of the waiver of Title XIX requirements allowing federal funding for the IowaCare program. The federal Centers for Medicare and Medicaid Services approved the amended waiver. These amendments will codify the limit set by the amended waiver on the number of members allowed to participate in the program and specify how new members will be added within the enrollment cap. The program accepted applications through June 30, 2013. The enrollment cap will be established at the number of enrolled members in the program when all applications filed prior to July 1, 2013, have been processed. Enrolled members will be allowed to renew coverage if



their enrollment period expires after July 1, 2013. Enrollment was suspended in order to maintain quality of care given available funds and to assist in the phasing out of IowaCare, which is scheduled to sunset on December 31, 2013, and in transitioning current enrollees into the new health care coverage structure that will be effective January 1, 2014.

## **HUMAN SERVICES DEPARTMENT**

Tuesday- 1:00

*Electronic access card use at prohibited locations, 09/04/13 IAB, ARC 1001C, NOTICE.*

The proposed amendments limit the types of businesses at which the electronic access card (EAC) can be used. Recipient households will not be allowed to use their EACs to access benefits at any of the following prohibited locations: a liquor store, a casino, a gambling casino, a gaming establishment, or a retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. A recipient that is proved to have used the recipient's EAC card at one of the above locations is considered to have committed a fraudulent act, must repay the amount accessed at the location, and is subject to a household ineligibility period.